

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of)

Implementation of Section IX of the)
Communications Act)

Assessment and Collection of)
Regulatory Fees for the)
1994 Fiscal Year)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MD Docket No. 94-19

**PETITION FOR CLARIFICATION OR RECONSIDERATION OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.429¹ of the rules of the Federal Communications Commission (Commission), hereby requests that the Commission clarify or reconsider that part of its Report and Order² which asserts that local exchange carriers (LECs) subject to price cap regulation that wish to treat the new regulatory fees as exogenous costs should petition for a waiver of the Commission's rules.³

A number of price cap LECs filed comments in this proceeding, claiming that the new regulatory fee payments should qualify for exogenous treatment. In a footnote, the Report and Order holds that this request is beyond the scope of this proceeding. The Report and Order, however, goes further to state that "LECs seeking to charge their regulatory fees directly to

¹ 47 C.F.R. Section 1.429.

² Implementation of Section IX of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19, Report and Order, (FCC 94-140) (released June 8, 1994) (Report and Order).

³ Report and Order, fn. 38.

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subscribers should petition for a waiver of the Commission's rules."⁴

To the extent that this language can be read to require that price cap LECs that seek to charge their regulatory fees to subscribers (by way of a request for exogenous cost increase in their price cap indexes) must petition for a waiver of the Commission's rules to do so, it must be clarified or reconsidered. The current rules do not require any such petition to be filed, and it is improper to impose such a requirement without a new rulemaking.

A provision already exists within the price cap rules under which exogenous treatment of this type of cost can be requested. Part 61.45(d) specifies that exogenous cost changes "shall be limited to those cost changes that the Commission shall permit or require." Part 61.45(d)(1) lists a number of cost changes that are considered exogenous. Subsection (vi) refers to "such tax law changes and other extraordinary exogenous cost changes as the Commission shall permit or require." This subsection permits exogenous cost requests for taxes and fees such as the newly created regulatory fees.

For example, on September 1, 1993, SWBT filed Transmittal No. 2295, without a waiver request, to ask for exogenous treatment of Telecommunications Relay Service (TRS) fund payments prior to the Commission's Order in CC Docket No. 90-571, released September 29, 1993 that approved exogenous cost treatment of these payments. Although Transmittal No. 2295 was deferred to November 30, 1993 at

⁴ Report and Order, fn. 38.

the Staff's direction (the filing actually became effective on October 16, 1993), a waiver of Section 61.45(d) was not required to request exogenous treatment of this extraordinary cost.

Since the existing rules are sufficient to allow a request for exogenous cost treatment to be filed for the new regulatory fees through the tariff review process, no waiver of the rules is required. In the tariff review process, the Commission may investigate the basis for any claim of exogenous cost treatment if there are sufficient grounds to do so. A separate proceeding, to rule on a petition for waiver, is unnecessary and will squander the Commission's resources.

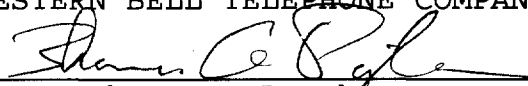
CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Commission clarify or reconsider that portion of the Report and Order that appears to impose a new requirement that petitions for waiver are necessary to obtain exogenous treatment for new extraordinary costs that otherwise fit within the Commission's rules for exogenous treatment.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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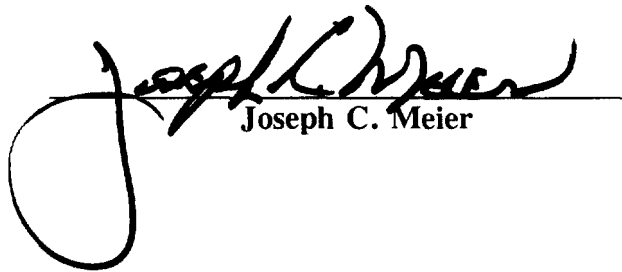
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July 18, 1994

CERTIFICATE OF SERVICE

I, Joseph Meier, hereby certify that the foregoing
"Petition for Clarification or Reconsideration of Southwestern Bell
Telephone Company", In MD Docket No. 94-19, has been served
this 18th day of July, 1994, to the Parties of Record.



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